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BEFORE THE ARIZONA CORPORATION C

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GARY PIERCE - CHAIRMAN
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

IN THE MATTER OF STAFF'S REQUEST
FOR THE COMMISSION ISSUANCE OF AN
ORDER TO SHOW CAUSE FOR THE
FAILURE OF CERBAT WATER COMPANY
TO COMPLY WITH COMMISSION RULES
AND REGULATIONS

DOCKET NO. W-023911-0166

PETITION FOR ORDER TO SHOW CAUSE
AND MOTION FOR PRELIMINARY
RELIEF

The Arizona Corporation Commission ("Commission") Utilities Division Staff ("Staff") hereby requests that the Commission issue an Order to Show Cause ("OSC") against Cerbat Water Company ("Cerbat" or "Company") appointing an Interim Manager to oversee Cerbat's operations indefinitely or until further order of the Commission. Staff also requests preliminary relief against Cerbat in the nature of:

1. Immediately appointing an Interim Manager, of Staff's choosing, to run the day-to-day operations of Cerbat.

2. Requiring the appointed Interim Manager to investigate and file a report in this Docket on whether an emergency rate application must be filed prior to the conclusion of the current permanent rate application due to potential water supply issues.

3. Continued use of the Interim Manager for the immediate future, until the Company has had an opportunity to respond and be heard either through this OSC and/or the permanent rate case, scheduled for hearing May 26, 2011.

4. Requiring the Interim Manager to work with the City of Kingman to re-establish the City's water inter-tie with Cerbat.

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Arizona Corporation Commission

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1 5. Requiring the Owners of Cerbat to cooperate with and indemnify, defend and hold
2 harmless the Interim Manager.

3 6. Staff further requests that the OSC be consolidated with the permanent rate case.

4 **Factual Background**

5 It has recently come to Staff's attention that an emergency situation exists between Cerbat, its
6 management and its water supply source. Staff believes that the immediate appointment of an
7 interim manager is necessary to protect the public health and safety.

8 Cerbat is a for-profit C Corporation, whose officers are B. Marc Neal (President) and Michael K.
9 Neal (Secretary). Cerbat's Directors are B. Marc Neal and Michael K. Neal.

10 Cerbat has no producing well and currently receives its entire water supply from one well owned
11 by the Claude K. Neal Family Trust ("Trust"), through a water supply agreement ("WSA").
12 Additionally, the Trust is responsible for the day-to-day operations of the Company through a
13 management agreement ("MA"). To Staff's knowledge, B. Marc Neal is the trustee and beneficiary
14 of the Trust.

15 Over the course of the last year and a half, the Trust has incurred substantial debt due to
16 mechanical outages at the well site, specifically due to the failure of an engine, and the ensuing lease
17 of a pump and bringing electricity to the site. The management for the Company has stated that
18 Cerbat is not in a financial position to pay these debts, and has received a demand letter from one of
19 the pump companies on April 7, 2011. In the letter, the pump company states that there are ten days
20 to pay the total amount owed for the pump repairs to the well or a suit will be filed and foreclosure
21 proceedings instituted on the well on which a lien has been placed. However, neither the pump nor
22 the well are owned by the Company, they are owned by the Trust. Cerbat, and its ratepayers, are not
23 responsible for maintenance of plant not owned by the Company. If the pump is removed, the Trust
24 will no longer be able to supply water to Cerbat, thereby violating its WSA.

25 Additionally, Staff has been informed by UNS Electric that both Cerbat's and the Trust's
26 accounts are delinquent thousands of dollars and have continuously been on the brink of having their
27 electric service shut off. If UNS Electric shuts off service to the Trust, the Trust will have no ability
28 to run its pump and provide water to Cerbat, thereby violating its WSA.

1 Cerbat's water system and the City of Kingman's ("City") water system may be
2 interconnected through the Trust Well. Should the Trust not be able to fulfill its obligations under the
3 WSA, Cerbat, as a last resort, has the potential to purchase water from the City. However, it is Staff's
4 understanding that, based on past experiences with Cerbat, the Trust and the Neal Family, the City
5 may not be willing to work with any of them absent a hefty and substantial deposit and possibly not
6 at all. If the City does not agree to supply Cerbat with water should the Trust cease being able to
7 provide water, Cerbat ratepayers will have no options left.

8 The Trust has continuously taken the position with Staff that it believes the Company is
9 responsible for maintaining the Trust's plant (well, pump, engine etc.), even though the Trust
10 recognizes the Company already pays the Trust for its water service through the WSA. Since the
11 Trust, the Management and the Company are all in essence the same entities, no one is acting for the
12 benefit of the Company and the ratepayers to enforce the WSA and secure a water source.

13 The Company is in immediate threat of discontinuance of water service. The severe
14 consequences of a water utility's collapse increase significantly as the summer season and triple digit
15 temperatures approach. Not only has the Company's management made it clear to Staff that the Trust
16 cannot fulfill many of its financial obligations, it has also implied to Staff that due to the
17 circumstance, they might cease operation of the Company. Should the Company's management walk
18 away, it will leave over 250 ratepayers without water as summer draws near. The immediate
19 emergency is obvious, and an interim manager to provide for the Company's and ratepayer's interests
20 is clearly needed.

21 **The Commission has Jurisdiction to Provide Interim Relief**

22 The Commission has jurisdiction to hear complaints against public service corporations
23 pursuant to A.R.S. §40-246. The Commission has jurisdiction to supervise and regulate public service
24 corporations pursuant to Article XV of the Arizona Constitution and Title 40 of the Arizona Revised
25 Statutes ("A.R.S.") Cerbat is a public service corporation as defined by Article XV, §2 of the
26 Arizona Constitution and A.R.S. §§40-281, 40-282. Pursuant to Decision No. 52443, issued
27 September 4, 1981, Cerbat received a Certificate of Convenience and Necessity ("CC&N") to
28 provide water utility service four miles north of Kingman in Mohave County, Arizona.

1 The Commission's granting of a CC&N places a requirement on a utility to provide a
2 continuous and adequate level of service to all ratepayers within the certificated area. Additionally, as
3 a condition to a CC&N, the utility is required to comply with Arizona law, Commission Orders, and
4 Commission Rules and Regulations.

5 The Arizona Administrative Code requires each utility to make reasonable efforts to supply a
6 satisfactory and continuous level of service, and to make reasonable provision to meet emergencies
7 resulting from the failure of service (A.A.C. R14-2-407(A),(C), (D)(2)). Because the individuals that
8 own the water supply also control the management of Cerbat, there is no one acting to adequately
9 enforce the WSA against the Trust. Therefore, Cerbat is in clear danger of being in violation of
10 A.A.C. R14-2-407(C), (D)(2), because the Trust is threatening to breach its obligation under the
11 WSA and the Company is not willing to take action to enforce it, nor is it taking action to obtain an
12 alternate water source.

13 The fact that the Company's management has allowed its financial situation to deteriorate to
14 the extent that it is in jeopardy of imminent collapse is a clear violation of Commission rules
15 requiring utilities to maintain an adequate level of service. Whether the circumstances are due to
16 neglect or mismanagement, the current state of the Company is unreasonable for any public service
17 corporation. If the Commission agrees that the situation is dire, the Commission has authority to act
18 under A.R.S. §40-321(A) to determine what is just, reasonable, safe, proper, adequate or sufficient,
19 and can enforce its determination by order.

20 Finally, because article XV, §3 of the Arizona Constitution allows the Commission to enter
21 "orders for the convenience, comfort, and safety, and preservation of the health of the customers of a
22 public service corporation," the Commission has the authority here to appoint an interim manager to
23 ensure Cerbat's ratepayers continue to receive water service.

24 If this request for preliminary interim relief is not granted, and an interim manager is not
25 appointed, there is a high probability of irreparable harm to Cerbat ratepayers because maintaining
26 the current management may cause the Company to lose its water source and leave ratepayers
27 without water during the summer months. The benefits of implementing an Interim Manager who can
28 maintain adequate service to the ratepayers and stabilize the Company more than offset any hardship

1 to Cerbat of losing its present management, which is poised to sacrifice the Company's sole water
2 supply. Finally, public policy favors granting the requested preliminary interim relief because it is the
3 best way to ensure that citizens of Arizona and Cerbat ratepayers will have adequate and reliable
4 water service.

5 **Conclusion**

6 Staff hereby respectfully requests that the Commission issue an OSC against Cerbat for the purpose
7 of appointing an Interim Manager to oversee Cerbat's operations indefinitely or until further order of
8 the Commission. Staff also requests preliminary relief against Cerbat in the nature of:

- 9 1. Immediately appointing an Interim Manager, of Staff's choosing, to run the day-to-day
10 operations of Cerbat.
- 11 2. Requiring the appointed Interim Manager to investigate and file a report in this Docket
12 on whether an emergency rate application must be filed prior to the conclusion of the
13 current permanent rate application due to potential water supply issues.
- 14 3. Continued use of the Interim Manager for the immediate future, until the Company
15 has had an opportunity to respond and be heard either through this OSC and/or the
16 permanent rate case, scheduled for hearing May 26, 2011.
- 17 4. Requiring the Interim Manager to work with the City of Kingman to re-establish the
18 City's water inter-tie with Cerbat.
- 19 5. Requiring the Owners of Cerbat to cooperate with and indemnify, defend and hold
20 harmless the Interim Manager.

21 Staff further requests that the OSC be consolidated with the permanent rate case.

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1 Staff respectfully requests that this Order to Show Cause and Request for Preliminary Relief be
2 addressed by the Commission as soon as practicable.

3 RESPECTFULLY SUBMITTED this 19th day of April, 2011.
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6

7 Kimberly A. Ruht
8 Charles Hains
9 Attorney, Legal Division
10 Arizona Corporation Commission
11 1200 West Washington Street
12 Phoenix, Arizona 85007
13 (602) 542-3402

14 **Original and eighteen (18) copies of**
15 **the foregoing filed this 19th day of**
16 **April, 2011, with:**

17 Docket Control
18 Arizona Corporation Commission
19 1200 West Washington Street
20 Phoenix, Arizona 85007

21 **Copy of the foregoing mailed this**
22 **19th day of April, 2011, to:**

23 Steve Wene, Esq.
24 1850 North Central Avenue
25 Suite 1100
26 Phoenix, Arizona 85004

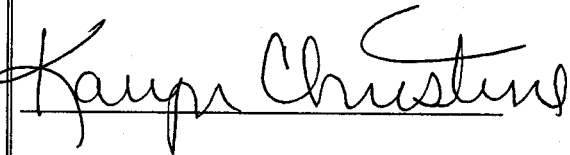
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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE- Chairman

BOB STUMP

SANDRA D. KENNEDY

PAUL NEWMAN

BRENDA BURNS

IN THE MATTER OF STAFF'S REQUEST
FOR THE COMMISSION ISSUANCE OF AN
ORDER TO SHOW CAUSE FOR THE
FAILURE OF CERBAT WATER COMPANY
TO COMPLY WITH COMMISSION RULES
AND REGULATIONS

DOCKET NO. W-02391A-11-0166

ORDER TO SHOW CAUSE

Special Open Meeting:

April 20, 2011

Phoenix, Arizona

BY THE COMMISSION:

Having considered the record and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes and orders that:

FINDINGS OF FACT

1. The Commission has jurisdiction to hear complaints against public service corporations pursuant to A.R.S. § 40-246. The Commission has jurisdiction to supervise and regulate public service corporations pursuant to Article XV of the Arizona Constitution and Title 40 of the Arizona Revised Statutes.

2. Cerbat is a subchapter "C" Corporation in the State of Arizona.

3. Cerbat is a public service corporation as defined by Article XV, §2 of the Arizona Constitution and A.R.S. §§40-281 and 40-282. Pursuant to Decision Order No. 52443, issued September 4, 1981, Cerbat received a Certificate of Convenience and Necessity ("CC&N") to provide water utility service four miles north of Kingman in Mohave County, Arizona.

4. The Company is a Class D utility providing water service to over 250 customers outside of Kingman, in Mohave County, Arizona.

1 5. Cerbat's officers are B. Marc Neal (President) and Michael K. Neal (Secretary).
2 Cerbat's Directors are B. Marc Neal and Michael K. Neal.

3 6. Cerbat has no producing well and currently receives its entire water supply from one
4 well owned by the Claude K. Neal Family Trust ("Trust") through a water supply agreement
5 ("WSA").

6 7. Additionally, the Trust is responsible for the day to day operations of the Company
7 through a management agreement ("MA").

8 8. To Staff's knowledge B. Marc Neal is the trustee and beneficiary of the Trust.

9 9. Over the course of the last year and a half, the Trust has incurred substantial debt due
10 to mechanical outages at the well site, specifically due the failure of an engine, and the ensuing lease
11 of a pump and bringing electricity to the site.

12 10. The management for the Company has stated that Cerbat is not in a financial position
13 to pay these debts, and has received a demand letter from one of the pump companies on April 7,
14 2011. In it, the pump company states that there are ten days to pay the total amount owed for the
15 pump repairs to the well or a suit will be filed and foreclosure proceedings instituted on the well on
16 which a lien has been placed.

17 11. Neither the pump nor the well are owned by the Company, they are owned by the
18 Trust. Cerbat, and its ratepayers, are not responsible for maintenance of plant not owned by the
19 Company. If the pump is removed, the Trust will no longer be able to supply water to Cerbat, thereby
20 violating its WSA.

21 12. Staff has been informed by UNS Electric that both Cerbat's and the Trust's accounts
22 are delinquent thousands of dollars and have continuously been on the brink of having their electric
23 service shut off.

24 13. If UNS Electric shuts off service to the Trust, the Trust will have no ability to run its
25 pump and provide water to Cerbat, thereby violating its WSA.

26 14. Cerbat's water system and the City of Kingman's ("City") water system may be
27 interconnected through the Trust Well. Should the Trust not be able to fulfill its obligations under the
28 WSA, Cerbat as a last resort, has the potential to purchase water from the City.

1 15. It is Staff's understanding that, based on past experiences with Cerbat, the Trust and
2 the Neal Family, the City may not be not willing to work with any of them absent a hefty and
3 substantial deposit and possibly not at all.

4 16. If the City does not agree to supply Cerbat with water should the Trust cease being
5 able to provide water, Cerbat ratepayers will have no options left.

6 17. The Trust has continuously taken the position with Staff that it believes the Company
7 is responsible for maintaining the Trust's plant (well, pump, engine etc.), even though the Trust
8 recognizes the Company already pays the Trust for its water supply through the WSA.

9 18. Since the Trust, the Management and the Company are all in essence the same entities,
10 no one is acting for the benefit of the Company and the ratepayers to enforce the WSA and secure a
11 water source.

12 19. The Company is in immediate threat of discontinuance of water service. The severe
13 consequences of a water utility's collapse increase significantly as the summer season and triple digit
14 temperatures approach.

15 20. The Company's management made it clear to Staff that not only can the Trust not
16 fulfill many of its financial obligations, it has also implied to Staff that due to the circumstance, they
17 might cease operation of the Company.

18 21. If the Company's management walks away, it will leave over 250 ratepayers without
19 water as summer draws near. The immediate emergency is obvious, and an interim manager to
20 provide for the Company's and ratepayer's interests is clearly needed.

21 22. The Commission's granting of a CC&N places a requirement on a utility to provide a
22 continuous and adequate level of service to all ratepayers within the certificated area.

23 23. As a condition to a CC&N, the utility is required to comply with Arizona law,
24 Commission Orders, and Commission Rules and Regulations.

25 24. The Arizona Administrative Code requires each utility to make reasonable efforts to
26 supply a satisfactory and continuous level of service, and to make reasonable provision to meet
27 emergencies resulting from the failure of service (A.A.C. R14-2-407(A), (C), (D)(2)).
28

1 25. The individuals that own the water supply also control the management of Cerbat, thus
2 there is no one acting to adequately enforce the WSA against the Trust.

3 26. Cerbat is in clear danger of being in violation of A.A.C. R14-2-407(C), (D)(2),
4 because the Trust is threatening to breach its obligation under the WSA and the Company is not
5 willing to take action to enforce it, nor is it taking action to obtain an alternate water source.

6 27. The fact that Company's management has allowed its financial situation to deteriorate
7 to the extent that it is in jeopardy of imminent collapse, a clear violation of Commission rules
8 requiring utilities to maintain an adequate level of service. Whether the circumstances are due to
9 neglect or mismanagement, the current state of the Company is unreasonable for any public service
10 corporation.

11 28. If the Commission agrees that the situation is dire, the Commission has authority to
12 act under A.R.S. §40-321(A) to determine what is just, reasonable, safe, proper, adequate or
13 sufficient, and can enforce its determination by order.

14 29. Article XV, §3 of the Arizona Constitution allows the Commission to enter "orders for
15 the convenience, comfort, and safety, and preservation of the health of the customers of a public
16 service corporation," the Commission has the authority here to appoint an interim manager to ensure
17 Cerbat's ratepayers continue to receive water service.

18 30. If this request for preliminary interim relief is not granted, and an interim manager is
19 not appointed, there is a high probability of irreparable harm to Cerbat ratepayers because
20 maintaining the current management may cause the Company to lose its water source and leave
21 ratepayers without water during the summer months.

22 31. The benefits of implementing an Interim Manager who can maintain adequate service
23 to the ratepayers and stabilize the Company more than offset any hardship to Cerbat of losing its
24 present management, which is poised to sacrifice the Company's sole water supply.

25 32. Finally, public policy favors granting the requested preliminary interim relief because
26 it is the best way to ensure citizens of Arizona and Cerbat ratepayers will have adequate and reliable
27 water service.

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1 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

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4 **CHAIRMAN**

COMMISSIONER

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7 **COMMISSIONER**

COMMISSIONER

COMMISSIONER

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10 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
Executive Director of the Arizona Corporation
Commission, have hereunto, set my hand and caused the
official seal of this Commission to be affixed at the
Capitol, in the City of Phoenix, this ____ day of
____, 2011.

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16 ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

17

18 DISSENT: _____

19

20 DISSENT: _____

1 SERVICE LIST FOR: Cerbat Water Company
2 DOCKET NO. W-02391A-11-0166

3 Steve Wene
4 Moyes Sellers & Sims
5 1850 North Central Avenue
6 Suite 1100
7 Phoenix, Arizona 85004
